Agriculture and Environment Appropriations Committee

Tuesday, April 4, 2006

4:00 pm

306 House Office Building

Allan Bense
Speaker

Stan Mayfield
Chair

Florida House of Representatives

Fiscal Council
Agriculture & Environment Appropriations Committee

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Agenda for
Date: April 4, 2006
Location: 306 House Office Building, Tallahassee, FL
Time: 4:00 PM

I. Call to Order

II. Roll Call

III. HB 733 CS by Dean

IV. HB 889 CS by Machek

V. HB 1007 CS by Proctor

VI. HB 1015 CS by Pickens

VII. HB 1155 by Evers

VIII. HB 1621 by Mayfield

IX. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 733 CS Airboats
SPONSOR(S): Dean and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Water & Natural Resources Committee	11 Y, 0 N, w/CS	Winker	Lotspeich
2) Agriculture & Environment Appropriations Committee		Davis	Dixon
3) State Resources Council			
4)			
5)			

SUMMARY ANALYSIS

The bill addresses several issues relating to the operation of airboats. Specifically, the bill:

- Amends s. 327.02(1), F.S., by defining the terms "airboat" and "muffler" for airboats.
- Creates s. 327.391, F.S., providing for the regulation by the Fish and Wildlife Conservation Commission (FWCC) of airboats and their operation and equipment.
- Requires that airboats have a muffler on their engine capable of effectively and adequately muffling the sound of the exhaust from the engine, except for persons engaged in a regatta, race, marine parade, tournament, or exhibition.
- Provides that an airboat cited for a violation of the muffler requirement must show proof of the installation of a muffler before the airboat can be operated on the waters of the state.
- Requires airboats to be equipped with an orange flag at least 10 inches by 12 inches flying at least 10 feet above the deck of the airboat and that failure to have the flag would be a violation constituting a non-criminal infraction.
- Requires persons convicted of two infractions of the airboat muffler and flag requirements to complete a boating safety course.
- Adds newly created airboat requirements to the list of non-criminal infractions.

The bill has an indeterminate fiscal impact and becomes effective on October 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill provides for additional regulations by Fish and Wildlife Conservation Commission for the operation and equipping of airboats.

B. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

Background

Airboats have a long history going as far back as the early 1900s. Around 1905, Alexander Graham Bell joined a team of aviation and boating inventors, including Glenn H. Curtis, early aviator and the inventor of aircraft engines, in Halifax, Nova Scotia where experiments were conducted combining aircraft engines and props and boats. Around 1920, Curtis moved to South Florida and introduced the first airboat to the Florida Everglades.[1]

According to the American Airboat Corporation an airboat is defined as a "buoyant self-propelled multi-terrain vehicle that depends on air thrust for propulsion."[2] Airboats have also been defined as flat-bottomed boats (or punts) powered by a propeller attached to an automobile or aircraft engine. The propeller spins at high speed and requires a large metal cage to protect passengers. The flat bottom of the boat allows airboats to navigate easily through shallow swamps and marshes as well as canals, rivers, and lakes. Drivers of airboats sit high on a platform to improve visibility and for spotting floating obstacles and animals in the airboat's path. Steering of the airboat is accomplished by swiveling vertical fins positioned in the propeller wash. Airboats vary in size from up to 20 (or more) person tour airboats to trail airboats for two to three passengers.

According to the American Airboat Corporation, airboats can reach speeds of 45 mph on land, 60 mph on water, and 70 mph on ice, with the top speed of about 135 mph on smooth, shallow water.

Before 1980, 90% of the airboats used aircraft engines to power the propeller. The rest used automotive engines. Since 1980, 90% of the airboats built have automotive engines because of their ease of maintenance and more readily available parts. Because of the engines used on airboats and the use of the propeller for moving the airboat, airboats typically generate high noise levels.

National Association of State Boating Law Administrators Model Motorboat Noise Act

The National Association of State Boating Law Administrators (NASBLA) represents the boating authorities of all 50 states. In 1989, the NASBLA adopted a model act for motorboat noise. On September 21, 2005, the act was made a part of the 2005 NASBLA Model Acts Review and Standardization Project. The act requires that all motorboats with above-water exhaust install mufflers to reduce exhaust noise and limit shoreline sound level to 75 decibels.

According to the NASBLA (see www.nasbla.org), 32 states have adopted noise regulations equivalent to the requirements described in the Model Act for Motorboat Noise.

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[1] See http://www.glenncurtissmemorialpark.com/curtisshistory.html

[2] See http://www.americanairboats.com-FAQ.htm

The intent of the Model Act is to address motorboat noise and does not address noise generated from other means such as the propeller on an airboat. However, since many airboat associations, including many Florida airboat associations, have expressed the desire that airboats not be discriminated against in the application of noise regulations, it is useful to briefly discuss the NASBLA Model Act.

In the Model Act, the term "muffler" is defined "as a sound suppression device or system designed and installed to abate the sound of exhaust gases emitted from an internal combustion engine and which prevents excessive or unusual noise."

The Model Act provides for noise level restrictions for motorboats. Under the provisions of the Model Act, no motorboat operator shall operate a motorboat that exceeds the following noise levels:

- For engines manufactured before January 1, 1993, a noise level of 90 decibels.
- For engines manufactured on or after January 1, 1993, a noise level of 88 decibels.

The Model Act establishes requirements for mufflers which include the following:

- Every motorboat shall at all times be equipped with a muffler or a muffler system in good working order and in constant operation and effectively installed to prevent any excessive or unusual noise.
- No person shall operate any motorboat that is equipped with an altered muffler or a muffler cutout or bypass or that otherwise reduces or eliminates the effectiveness of any muffler or muffler system.
- No person shall remove, alter, or otherwise modify in any way a muffler or muffler system in a manner that prevents it from being operated in accordance with the provisions of the act.

The Act provides that no person shall manufacture or sell any motorboat with a muffler or muffler system which does not comply with the noise restrictions stated above.

The Act provides exemptions for the motorboat noise restrictions. Such restrictions do not apply to motorboats registered and actually participating in a racing event or tune-up periods for such racing events which must be conducted in accordance with and permitted by the United States Coast Guard or the state boating authority.

And finally, the Act includes provisions for the enforcement of the noise restrictions. Any law enforcement officer authorized to enforce the noise level provisions of the act who has reason to believe that a motorboat is not in compliance with the noise levels of the act, may direct the person operating the motorboat to submit the motorboat to an on-site test to measure the noise level. If the motorboat exceeds the noise level, the officer may direct the operator to take immediate and reasonable measures to correct the violation, including returning the motorboat to a mooring and keeping the motorboat at the mooring until the violation is corrected and ceases.

Florida Airboat Associations

There are a number of airboat associations throughout Florida and a statewide airboat association called the Florida Airboat Association (FAA). The FAA was established in 1994 and according to its website (www.flairboat.com) is "dedicated to the conservation of our natural resources, the preservation of sportsmen's rights and the promotion of boating safety through community involvement and public education." In addition to the statewide airboat association, there are a number of local airboat associations, including:

- Brevard Airboat and Powerboat Association
- Broward County Airboat, Halftrack, and Conservation Club
- Citrus County Airboat Alliance
- Glades Airboat and Buggy Association

- Highlands Airboat Association
- Indian River County Boat Association
- Kissimmee River Valley Sportsman Association
- Lake County Airboat Association
- Lake Okeechobee Airboat Association
- National Airboat Racing Association (Florida branch)
- Osceola Airboat Association
- Orange County Airboat Association
- Palm Beach County Airboat and Halftrack Conservation Club
- Peace River Valley Airboat Club
- Seminole County Airboat Club
- Volusia County Airboat Association
- Airboat Association of Florida
- West Coast Airboat Club
- Withlacoochee Region Airboat Association

Current Law

Chapter 327, F.S., the Florida Vessel Safety Law, provides the FWCC with authority over the operation, regulation, and safety of vessels on Florida waters. Section 327.02(37), F.S., defines a vessel to be synonymous with "boat" as referenced in s. 1(b), Art. VII of the State Constitution, and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

Sections of Chapter 327 address numerous issues relating to the regulation of vessels including such areas as: the reporting of accidents (s. 327.30, F.S.); reckless and careless operation of vessels (s. 327.33, F.S.); boating under the influence (s. 327.35, F.S.); testing for alcohol, chemical or controlled substances (s. 327.352, F.S.); personal watercraft regulations (s. 327.39, F.S.); boating safety courses and identification cards (s. 327.395, F.S.); the creation of the Boating Advisory Council (s. 327.803, F.S.); and muffling devices on vessels (s. 327.65, F.S.).

Section 327.65(1), F.S., requires that the exhaust of every internal combustion engine used on any vessel operated on the waters of the state must be "effectively muffled" by equipment constructed and used to muffle the noise of the exhaust in a "reasonable manner." The use of "muffler cutouts" (cutouts, bypasses or other devices that increase sound pressure levels or change the original manufactured exhaust system of the vessel) is prohibited, except for vessels competing in a boating regatta or official boat race and for vessels while on trial runs.

Section 327.65(2)(a)1., F.S., authorizes counties to impose additional noise pollution and exhaust regulations on vessels by way of county ordinances. A county may adopt an ordinance which prohibits a person from operating any vessel in such a manner as to exceed 90dB A at a distance of 50 feet from the vessel. The term "dB A" means "the composite abbreviation for the A-weighted sound level and the unit of sound level, the decibel." "Sound level" means "the A-weighted sound pressure measured with fast response using an instrument complying with the specifications for sound level meters of the American National Standards Institute, Inc., or its successor bodies, except that only a weighting and fast dynamic response need be provided."[3]

Section 327.65(2)(a)2., F.S., provides that any person operating a vessel and who refuses to submit to a sound level test when requested to do so by a law enforcement officer can be cited and could be found guilty of a misdemeanor of the second degree.

[3] Section 327.65(2)(b), F.S.

Section 327.48, F.S., establishes procedures for obtaining a permit for holding a boating regatta, tournament, boat race, marine parade, or exhibition. Should the event be held on navigable waters of the United States, a permit must be secured from the U.S. Coast Guard. For an event held in any county, the person directing the event must notify the County Sheriff or the FWCC at least 15 days prior to the event "in order that appropriate arrangements for safety and navigation may be assured." Ant person directing such events "shall be responsible for providing adequate protection to the participants, spectators, and other users of the water."

Section 369.309, F.S., prohibits the operation of airboats on the Wekiva River System. An exemption is provided in the case of an emergency or to an employee of a municipal, county, state, or federal agency or their agents on official government business. Persons convicted for violation this prohibition shall be guilty of a second degree misdemeanor punishable as provided in s. 775.082 or s. 775.083, F.S.

Airboats and Noise Issues

According to the FWCC, the language in s. 327.65(1), F.S., regarding a vessel's (including airboats) exhaust to be "effectively muffled . . . in a reasonable manner," lacks specificity and allows for considerable room for interpretation. The FWCC, adopting the interpretation by the former Game and Fresh Water Fish Commission, permitted the use of "flex-pipe" (flexible tubing that diverts engine exhaust to behind the airboat) as an effective muffling device for airboats. Such devices became common and accepted by the airboat community. However, as the number of waterfront residences and airboats has increased over the years, the "effectiveness" of muffling airboats with "flex-pipe" has raised considerable concerns related to the noise of airboats on Florida's waterways.

In 2003, a bill was filed (SB 1012) which would have restricted airboat noise statewide to 90 decibels at 50 feet. The bill was heard in the Senate Natural Resources Committee and was amended to authorize the FWCC to adopt a rule which would provide a uniform ordinance for vessel sound regulation that could be adopted by any county or municipality. The bill did not pass out of the Senate committee; but there was an expectation that the FWCC would hold public workshops on airboat noise.

Following several public workshops held across the state, the FWCC asked the Florida Boating Advisory Council to develop a code of ethics for airboat operators (see below). In addition, FWCC staff was directed to initiate a research project (see below) that would provide direction on the types of muffling devices that could effectively muffle airboat engines.

Code of Ethics

The FWCC requested the state's Boating Advisory Council to develop an Airboat User Code of Ethics. An April 26, 2004 version of the code of ethics included the following:

- Respect the rights of everyone to enjoy Florida's waterways.
- Learn and observe all State of Florida boating regulations, navigation rules, and vessel safety equipment requirements.
- Recognize that the noise generated from an airboat propeller and engine exhaust system may annoy other people in the area.
- Equip the airboat with an approved muffling device and operate the airboat in a manner that will reduce engine exhaust sound levels.
- Operate an airboat at a slow speed on or near boat ramps and move away from the boat ramp an adequate distance before powering up the airboat, and where possible, no power loading of the airboat on to the trailer.
- Use slow speeds to reduce noise near residential and public use areas.
- Be extra cautious to reduce sound levels of an airboat during nighttime hours.
- Understand that the public will judge all airboat users by the actions of one.
- Protect natural resources and do not needlessly disturb wildlife.

Noise Study

FWCC contracted with a research team from the Florida Atlantic University (FAU) College of Engineering to conduct tests and analysis on airboat sound/noise.

The FWCC/FAU airboat sound/noise research project intended to answer the following questions:

- What level of sound can be obtained from an airboat using various automotive-type muffling devices, "flex-pipe," or other devices on the wider range of airboat propulsion systems?
- How do sound levels generated by an airboat's engine's exhaust compare to those sound levels generated by the airboat's propeller blades?
- To what extent do environmental factors affect the resonance and nature of the sound generated by an airboat?
- What mechanical and technological changes and devices could be developed and used to help quiet airboats?

The research project was conducted on a lake in the Ocala National Forest using 13 different airboat configurations with a variety of different engines, propellers, and mufflers. Sound measurement equipment and methodology were used to record and analyze the sounds generated by the test airboats at idle, 50%, and 100% operating conditions for both stationary and drive-by tests.

The findings from the research project were as follows:

- When running at full speed, airboats noise levels exceeded the current statutorily prescribed 90 decibels at 50 feet.
- When running at full speed, mufflers have little or no effect on the noise radiated by airboats.
- Mufflers do reduce an airboat's radiated noise levels at minimal planing speeds by about 4 decibels.
- At minimum planing speeds or less, most airboats meet the current statutorily prescribed 90 decibel noise limit at 50 feet.
- Flex pipes without mufflers provide some level of noise attenuation at higher airboat engine RPM, but not at lower RPM.
- Measurement of the effect of mufflers on airboats showed that they provide broadband noise attenuation at lower airboat operational speeds.
- When operating under different conditions, the noise level for an airboat's given configuration of engine, gearbox, propeller, and muffler was only a function of engine RPM, and not a function of vessel weight or speed.
- Airboat operators are likely to be at risk of hearing damage and it is likely that noise exposure limits could be exceeded for bystanders in the vicinity of boat ramps where airboats are maneuvering or power loading onto trailers.
- Sound levels generated by airboats when running at full speed are dominated by propeller noise.

In addition, the authors of the research project made the following recommendations:

- Airboat engine and propeller RPM should be minimized to reduce noise levels.
- Airboat propellers should be designed to maximize thrust at lower tip speed to reduce the noise levels of propellers.

Based on these findings and recommendations, on September 21, 2005, the FWCC directed staff to draft a new policy that would require airboats to be equipped with mufflers and that the use of flex-pipes alone would no longer be acceptable to help reduce the noise levels of airboats. FWCC staff also continued to hold public meetings throughout the state for the purpose of taking testimony from the

airboat user community and persons who are or may be adversely affected by the noise generated by airboats.

On January 24, 2006, the FWCC issued a Marine Enforcement Alert establishing a law enforcement protocol requiring airboats to use automotive-style mufflers to reduce engine exhaust sound levels. "Muffler" is defined as "an automotive-style sound suppression device or system designed and installed to abate the sound of exhaust gasses emitted from an internal combustion engine and which prevents excessive or unusual noise."

Through June 2006, the FWCC will implement a formal education effort making airboat operators and users aware of the required muffler provisions and by July 1, 2006, FWCC law enforcement officers will begin an education/enforcement phase where officers will issue warnings for non-compliance and citations for repeated non-compliance. Persons violating the muffler requirement will be charged under Section 327.65(1), F.S., as a failure to meet vessel engine exhaust muffling requirements.

EFFECT OF PROPOSED CHANGES

The bill amends s. 327.02, F.S., to add definitions for the terms "airboat" and "muffler." An "airboat" is defined as "a vessel, designed for use in shallow waters, powered by an internal combustion engine with an airplane-type propeller mounted above the stern used to push air across a single set of rudders." A "muffler" is defined as "a sound suppression device or system designed to effectively abate the sound of exhaust gases emitted from an internal combustion engine and prevent excessive sound when installed on such engine."

The bill creates s. 327.391, F.S., to provide for the regulation by the FWCC of airboats and their operation and equipment. Specifically, the provisions of the new s. 327.391, F.S.:

- Requires that an airboat must have a muffler on its engine capable of adequately muffling the sound of the exhaust of the engine.
- Prohibits the use of cutouts, except for vessels competing in a regatta or official boat race and for vessels while on trial runs at such events.
- Provides that an airboat cited for a violation of the muffling requirements of the bill, must show proof of the installation of a muffler before the airboat can be operated on the waters of the state.
- Requires airboats to be equipped with a mast or flagpole bearing a flag at a height of at least 10 feet above the deck of the airboat. The flag must be at least 10 inches by 12 inches and international orange in color. Airboat operators not complying with the flag requirement may be cited for a non-criminal infraction.
- Requires persons convicted of two infractions of the airboat muffler and flag requirements to successfully complete a boating safety course
- Adds newly created airboat requirements to the list of non-criminal infractions.
- Exempt from the requirements of the section a performer engaged in a professional exhibition and persons who are preparing to participate or who are participating in a regatta, race, marine parade, tournament or exhibition which is held in compliance with s. 327.48.

The bill makes conforming changes and corrects cross-references to several sections of statute.

The bill has an effective date of October 1, 2006.

C. SECTION DIRECTORY:

Section 1: Amends s. 327.02, F.S., by creating definitions for "airboat" and "muffler. "

Section 2: Creates s. 327.391, F.S., regulating the operation of airboats.

Section 3: Amends s. 327.73, F.S., adding newly created airboat requirements to the list of non-criminal infractions.

Section 4: Amends s. 327.731, F.S., requiring mandatory boating safety education for violators of airboat requirements.

Section 5: Amends s. 320.08, F.S., to conform a cross-reference.

Section 6: Amends s. 328.17, F.S., to conform a cross-reference.

Section 7: Amends s. 342.07, F.S., to conform a cross-reference.

Section 8: Amends s. 616.242, F.S., to conform terminology.

Section 9: Amends s. 713.78, F.S., to conform terminology.

Section 10: Amends s. 715.07, F.S., to conform a cross-reference.

Section 11: Provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Indeterminate. See Fiscal Comments below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires airboat owners and the airboat industry to modify/retrofit/replace equipment to meet the requirements of this legislation. Costs associated with compliance efforts will vary and cannot be determined at this time.

D. FISCAL COMMENTS:

The bill requires proof of a muffler installation before the airboat can be further operated, if a citation is issued. This would create a tracking obligation on the part of FWCC and the development of an inspection plan to ensure compliance by persons who have been cited for a violation of the muffler requirements of the bill. FWCC is unable to provide a cost estimate for the compliance tracking system.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require cities or counties to spend funds or take actions requiring the expenditure of funds. Nor does the bill reduce the authority that cities and counties have to raise revenues in the aggregate or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Although not specified in the bill, the bill may require FWCC to adopt rules relating to the operation of airboats and equipment required on airboats.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Although the bill addresses the suppression of noise from the operation of airboats emanating from the engine by requiring a specified muffler, the bill does not address nor provide any provisions or requirements that would address the suppression of airboat noise emanating from the airplane-type propeller mounted above the stern of the airboat. Neither does the bill define the terms "effectively" nor "adequately" as they related to requiring mufflers on airboats to effectively abate and adequately muffle the sound from the airboat engine.

FWCC staff has provided the following comments on and concerns with the bill.

The bill specifies muffler requirements for airboat engines. Such muffler equipment requirements are pre-empted by federal regulations as follows:

> "Unless permitted by the Secretary under section 4305 of this title, a State or political subdivision of a State may not establish, continue in effect, or enforce a law or regulation establishing a recreational vessel or associated equipment performance or other safety standard or imposing a requirement for associated equipment (except insofar as the State or political subdivision may, in the absence of the Secretary's disapproval, regulate the carrying or use of marine safety articles to meet uniquely hazardous conditions or circumstances within the State) that is not identical to a regulation prescribed under section 4302 of this title." (TITLE 46 – Shipping, Subtitle II – Vessels and Seamen – Part B – Inspection and Regulation of Vessels CHAPTER 43 – Recreational Vessels, Sec. 4306 – Federal Preemption)

The FWCC has requested an opinion from the U.S. Coast Guard as to whether it is exempt from this rule.

The bill requires an "airboat" cited for a muffler violation to show proof of muffler installation before it is further operated on state waters. The language should refer to "airboat operator" since an "airboat" cannot be cited for a violation. Further, the bill does not specify to whom this proof must be shown or the form this proof must take. This requirement creates a tracking obligation for FWCC and the necessity to develop an inspection plan to ensure compliance by those who have been cited for a muffler violation. The cost for such tracking/inspection plan is not known at this time.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 15, 2006, the Water and Natural Resources Committee adopted a strike-all amendment to HB 733. The strike-all amendment makes the following changes to the bill:

- Deletes the provision that airboats be operated in a reasonable and prudent manner.
- Revises the definition of "airboat" by removing the phrase "flat-bottomed."
- Adds the word "effectively" before the word "abate" regarding mufflers.
- Deletes the requirement that airboats be operated in compliance with numerous provisions of Chapter 327, F.S. on vessel safety.
- Deletes the provision that counties and municipalities may adopt ordinances for the operation and equipping of airboats as long as they are not in conflict with the provisions of Chapter 327, F.S., and do not discriminate against airboats.
- Changes the dimensions of the safety flag airboats must have.
- Adds newly created airboat requirements to the list of non-criminal infractions and requires mandatory completion of a boating safety course for multiple violations.

This analysis has been revised to reflect the strike-all amendment.

CHAMBER ACTION

The Water & Natural Resources Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to airboats; amending s. 327.02, F.S.; defining the terms "airboat" and "muffler"; conforming terminology; creating s. 327.391, F.S.; providing for regulation of airboat operation and equipment; requiring described sound-muffling device; prohibiting the use of cutouts and flex pipe; requiring display of described flag; providing penalties; providing exceptions; amending s. 327.73, F.S.; providing for penalties, court costs, and procedures for disposition of citations for specified violations; amending s. 327.731, F.S.; requiring certain violators to complete a described boating safety course and to file proof of completion with the Fish and Wildlife Conservation Commission prior to operating a vessel; providing for an exemption from the course; amending ss. 320.08, 328.17, 342.07, 616.242, 713.78, and 715.07, F.S.; revising cross-references and terminology to conform to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Present subsection (37) of section 327.02, Florida Statutes, is amended, subsections (1) through (22) are renumbered as subsections (2) through (23), respectively, subsections (23) through (38) are renumbered as subsections (25) through (40), respectively, and new subsections (1) and (24) are added to that section, to read:

327.02 Definitions of terms used in this chapter and in chapter 328.--As used in this chapter and in chapter 328, unless the context clearly requires a different meaning, the term:

(1) "Airboat" means a vessel, designed for use in shallow waters, powered by an internal combustion engine with an airplane-type propeller mounted above the stern used to push air across a set of rudders.

(24) "Muffler" means an automotive-style sound-suppression device or system designed to effectively abate the sound of exhaust gases emitted from an internal combustion engine and prevent excessive sound when installed on such engine.

(39) ~~(37)~~ "Vessel" is synonymous with boat as referenced in s. 1(b), Art. VII of the State Constitution and includes every description of watercraft, barge, and airboat ~~air boat~~, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

Section 2. Section 327.391, Florida Statutes, is created to read:

327.391 Airboats regulated.--

(1) The exhaust of every internal combustion engine used on any airboat operated on the waters of this state shall be provided with an automotive-style factory muffler, underwater exhaust, or other manufactured device capable of adequately muffling the sound of the exhaust of the engine as described in s. 327.02(24). The use of cutouts or flex pipe is prohibited, except as provided in subsection (4). Any person who violates this subsection commits a noncriminal infraction, punishable as provided in s. 327.73(1).

(2) An airboat operator cited for an infraction of this section shall not operate the airboat until a muffler as defined in s. 327.02 is installed. A second or any subsequent violation of this section is a second degree misdemeanor, punishable as provided in s. 775.083.

(3) An airboat may not operate on the waters of the state unless it is equipped with a mast or flagpole bearing a flag at a height of at least 10 feet above the deck. The flag must be square or rectangular, at least 10 inches by 12 inches in size, international orange in color, and displayed so that the visibility of the flag is not obscured in any direction. Any person who violates this subsection commits a noncriminal infraction, punishable as provided in s. 327.73(1).

(4) This section does not apply to a performer engaged in a professional exhibition or a person preparing to participate or participating in a regatta, race, marine parade, tournament, or exhibition held in compliance with s. 327.48.

Section 3. Paragraphs (v) and (w) are added to subsection (1) of section 327.73, Florida Statutes, to read:

327.73 Noncriminal infractions.--

(1) Violations of the following provisions of the vessel laws of this state are noncriminal infractions:

(v) Section 327.391(1), relating to requirement for an adequate muffler on an airboat.

(w) Section 327.391(3), relating to display of a flag on an airboat.

Any person cited for a violation of any such provision shall be deemed to be charged with a noncriminal infraction, shall be cited for such an infraction, and shall be cited to appear before the county court. The civil penalty for any such infraction is $50, except as otherwise provided in this section. Any person who fails to appear or otherwise properly respond to a uniform boating citation shall, in addition to the charge relating to the violation of the boating laws of this state, be charged with the offense of failing to respond to such citation and, upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A written warning to this effect shall be provided at the time such uniform boating citation is issued.

Section 4. Subsection (1) of section 327.731, Florida Statutes, is amended to read:

327.731 Mandatory education for violators.--

(1) Every person convicted of a criminal violation of this chapter, every person convicted of a noncriminal infraction under this chapter if the infraction resulted in a reportable boating accident, and every person convicted of two noncriminal

infractions as defined in s. 327.73(1)(h)-(k), (m), (o), (p), and (s)-(w) ~~(s)-(u)~~, said infractions occurring within a 12-month period, must:

(a) Enroll in, attend, and successfully complete, at his or her own expense, a boating safety course that meets minimum standards established by the commission by rule; however, the commission may provide by rule pursuant to chapter 120 for waivers of the attendance requirement for violators residing in areas where classroom presentation of the course is not available;

(b) File with the commission within 90 days proof of successful completion of the course;

(c) Refrain from operating a vessel until he or she has filed the proof of successful completion of the course with the commission.

Any person who has successfully completed an approved boating course shall be exempt from these provisions upon showing proof to the commission as specified in paragraph (b).

Section 5. Paragraphs (d) and (e) of subsection (5) of section 320.08, Florida Statutes, are amended to read:

320.08 License taxes.--Except as otherwise provided herein, there are hereby levied and imposed annual license taxes for the operation of motor vehicles, mopeds, motorized bicycles as defined in s. 316.003(2), and mobile homes, as defined in s. 320.01, which shall be paid to and collected by the department or its agent upon the registration or renewal of registration of the following:

(5) SEMITRAILERS, FEES ACCORDING TO GROSS VEHICLE WEIGHT; SCHOOL BUSES; SPECIAL PURPOSE VEHICLES.--

(d) A wrecker, as defined in s. 320.01(40), which is used to tow a vessel as defined in s. 327.02(39) ~~(36)~~, a disabled, abandoned, stolen-recovered, or impounded motor vehicle as defined in s. 320.01(38), or a replacement motor vehicle as defined in s. 320.01(39): $30 flat.

(e) A wrecker, as defined in s. 320.01(40), which is used to tow any motor vehicle, regardless of whether or not such motor vehicle is a disabled motor vehicle as defined in s. 320.01(38), a replacement motor vehicle as defined in s. 320.01(39), a vessel as defined in s. 327.02(39) ~~(36)~~, or any other cargo, as follows:

1. Gross vehicle weight of 10,000 pounds or more, but less than 15,000 pounds: $87 flat.

2. Gross vehicle weight of 15,000 pounds or more, but less than 20,000 pounds: $131 flat.

3. Gross vehicle weight of 20,000 pounds or more, but less than 26,000 pounds: $186 flat.

4. Gross vehicle weight of 26,000 pounds or more, but less than 35,000 pounds: $240 flat.

5. Gross vehicle weight of 35,000 pounds or more, but less than 44,000 pounds: $300 flat.

6. Gross vehicle weight of 44,000 pounds or more, but less than 55,000 pounds: $572 flat.

7. Gross vehicle weight of 55,000 pounds or more, but less than 62,000 pounds: $678 flat.

8. Gross vehicle weight of 62,000 pounds or more, but less than 72,000 pounds: $800 flat.

9. Gross vehicle weight of 72,000 pounds or more: $979 flat.

Section 6. Subsection (4) of section 328.17, Florida Statutes, is amended to read:

328.17 Nonjudicial sale of vessels.--

(4) A marina, as defined in s. 327.02(20) ~~(19)~~, shall have a possessory lien upon any vessel for storage fees, dockage fees, repairs, improvements, or other work-related storage charges, and for expenses necessary for preservation of the vessel or expenses reasonably incurred in the sale or other disposition of the vessel. The possessory lien shall attach as of the date the vessel is brought to the marina, or as of the date the vessel first occupies rental space at the marina facility. However, in the event of default, the marina must give notice to persons who hold perfected security interests against the vessel under the Uniform Commercial Code in which the owner is named as the debtor.

Section 7. Subsection (2) of section 342.07, Florida Statutes, is amended to read:

342.07 Recreational and commercial working waterfronts; legislative findings; definitions.--

(2) As used in this section, the term "recreational and commercial working waterfront" means a parcel or parcels of real property that provide access for water-dependent commercial activities or provide access for the public to the navigable waters of the state. Recreational and commercial working

waterfronts require direct access to or a location on, over, or adjacent to a navigable body of water. The term includes water-dependent facilities that are open to the public and offer public access by vessels to the waters of the state or that are support facilities for recreational, commercial, research, or governmental vessels. These facilities include docks, wharfs, lifts, wet and dry marinas, boat ramps, boat hauling and repair facilities, commercial fishing facilities, boat construction facilities, and other support structures over the water. As used in this section, the term "vessel" has the same meaning as in s. 327.02(39) ~~(37)~~. Seaports are excluded from the definition.

Section 8. Paragraph (a) of subsection (10) of section 616.242, Florida Statutes, is amended to read:

616.242 Safety standards for amusement rides.--

(10) EXEMPTIONS.--

(a) This section does not apply to:

1. Permanent facilities that employ at least 1,000 full-time employees and that maintain full-time, in-house safety inspectors. Furthermore, the permanent facilities must file an affidavit of the annual inspection with the department, on a form prescribed by rule of the department. Additionally, the Department of Agriculture and Consumer Services may consult annually with the permanent facilities regarding industry safety programs.

2. Any playground operated by a school, local government, or business licensed under chapter 509, if the playground is an incidental amenity and the operating entity is not primarily

engaged in providing amusement, pleasure, thrills, or excitement.

3. Museums or other institutions principally devoted to the exhibition of products of agriculture, industry, education, science, religion, or the arts.

4. Conventions or trade shows for the sale or exhibit of amusement rides if there are a minimum of 15 amusement rides on display or exhibition, and if any operation of such amusement rides is limited to the registered attendees of the convention or trade show.

5. Skating rinks, arcades, lazer or paint ball war games, bowling alleys, miniature golf courses, mechanical bulls, inflatable rides, trampolines, ball crawls, exercise equipment, jet skis, paddle boats, airboats ~~air boats~~, helicopters, airplanes, parasails, hot air or helium balloons whether tethered or untethered, theatres, batting cages, stationary spring-mounted fixtures, rider-propelled merry-go-rounds, games, side shows, live animal rides, or live animal shows.

6. Go-karts operated in competitive sporting events if participation is not open to the public.

7. Nonmotorized playground equipment that is not required to have a manager.

8. Coin-actuated amusement rides designed to be operated by depositing coins, tokens, credit cards, debit cards, bills, or other cash money and which are not required to have a manager, and which have a capacity of six persons or less.

9. Facilities described in s. 549.09(1)(a) when such facilities are operating cars, trucks, or motorcycles only.

10. Battery-powered cars or other vehicles that are designed to be operated by children 7 years of age or under and that cannot exceed a speed of 4 miles per hour.

11. Mechanically driven vehicles that pull train cars, carts, wagons, or other similar vehicles, that are not confined to a metal track or confined to an area but are steered by an operator and do not exceed a speed of 4 miles per hour.

Section 9. Paragraph (b) of subsection (1) of section 713.78, Florida Statutes, is amended to read:

713.78 Liens for recovering, towing, or storing vehicles and vessels.--

(1) For the purposes of this section, the term:

(b) "Vessel" means every description of watercraft, barge, and airboat ~~air boat~~ used or capable of being used as a means of transportation on water, other than a seaplane or a "documented vessel" as defined in s. 327.02(9) ~~(8)~~.

Section 10. Paragraph (b) of subsection (1) of section 715.07, Florida Statutes, is amended to read:

715.07 Vehicles or vessels parked on private property; towing.--

(1) As used in this section, the term:

(b) "Vessel" means every description of watercraft, barge, and airboat used or capable of being used as a means of transportation on water, other than a seaplane or a "documented vessel" as defined in s. 327.02(9) ~~(8)~~.

Section 11. This act shall take effect October 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. **733**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Agriculture and Environment Appropriations Committee

Representative(s) Dean offered the following:

Amendment

Remove line(s) 52-73 and insert:

(1) The exhaust of every internal combustion engine used on any airboat operated on the waters of this state shall be provided with an automotive-style factory muffler, underwater exhaust, or other manufactured device capable of adequately muffling the sound of the exhaust of the engine as described in s. 327.02(24). The use of cutouts or flex pipe as the sole source of muffling is prohibited, except as provided in subsection (4). Any person who violates this subsection commits a noncriminal infraction, punishable as provided in s. 327.73(1).

(2) An airboat operator cited for an infraction of this section shall not operate the airboat until a muffler as defined in s. 327.02 is installed. A second violation of this provision

shall result in a fine of $250, a third shall result in a fine of $500 and any subsequent violation shall be a fine of $500.

(3) An airboat may not operate on the waters of the state unless it is equipped with a mast or flagpole bearing a flag at a height of at least 10 feet above the lowest portion of the vessel. The flag must be square or rectangular, at least 10 inches by 12 inches in size, international orange in color, and displayed so that the visibility of the flag is not obscured in any direction. Any person who violates this subsection commits a noncriminal infraction, punishable as provided in s. 327.73(1).

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 889 CS Fran Reich Aquatic Preserve
SPONSOR(S): Machek
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Water & Natural Resources Committee	9 Y, 0 N, w/CS	Winker	Lotspeich
2) Agriculture & Environment Appropriations Committee		Dixon	Dixon
3) State Resources Council			
4)			
5)			

SUMMARY ANALYSIS

The bill designates the Site 1 Impoundment Project of the Comprehensive Everglades Restoration Plan sponsored by the South Florida Water Management District (SFWMD) as the Fran Reich Preserve. The bill directs the SFWMD to erect suitable markers designating the Fran Reich Preserve.

The bill has no fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

The Site 1 Impoundment Project is a joint project between the U.S. Army Corps of Engineers and the South Florida Water Management District as part of the Comprehensive Everglades Restoration Plan. The purpose of the project, which is located in Palm Beach County, is to supplement water deliveries to the Hillsboro Canal by capturing and storing excess water currently discharged to the Intracoastal Waterway. The supplemental water deliveries are intended to reduce the demands upon Lake Okeechobee.

As part of the project, an impoundment pool will also provide groundwater recharge, reduce seepage from adjacent natural areas, and prevent saltwater intrusion by releasing impounded water back into the Hillsboro Canal when conditions dictate. Some measure of flood protection may also be provided by the project along with water quality improvements. The project includes canal and structure relocations, canal conveyance improvements, water control structures, and an aboveground impoundment with a total storage capacity of 13,280 acre-feet located in the Hillsboro Canal Basin in southern Palm Beach County.

Fran Reich was born in New York City in 1914. After graduating from Queens College, Fran worked in a law office and married her husband Allan. She raised a family and continued to work and be active in numerous educational and civic group issues. In 1978, Fran and her husband moved to Boca Raton, Florida where she founded the West Boca Community Council in 1980. Fran served as the Council's President and Board Chair. Fran served on many local and county advisory committees including the Infrastructure Task Force, Traffic Performance Standards, Ethics Committee, and the Land Use Advisory Board.

Fran's many accomplishments include:

- Bringing a new middle school to West Boca.
- Leading the fight against a West Boca landfill and incinerator by convincing the County that there was no need for such facilities.
- Defeating a proposed airport in West Boca.
- Assisting in the establishment of a West Boca Medical Center.
- Advocating for parks, libraries, schools, post offices, fire stations, and youth activity centers in West Boca.

With Fran's leadership, the West Boca Community Council fought the establishment by the County of a landfill on the southeastern edge of the Loxahachee Wildlife Refuge and what has become the Site 1 Impoundment Project of the Comprehensive Everglades Restoration Plan.

Fran died in February 2005.

C. SECTION DIRECTORY:

Section 1: Designates the Site 1 Impoundment Project of the Comprehensive Everglades Restoration Plan as the Fran Reich Preserve; directs the South Florida Water Management District to erect suitable markers.

Section 2: Provides that the act becomes effective on July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not appear to require cities or counties to spend funds or take actions requiring the expenditure of funds. Nor does the bill reduce the authority that cities and counties have to raise revenues in the aggregate or reduce the percentage of a state tax shared with cities or counties.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to Department of Environmental Protection staff, designating the Site 1 Project water body as an aquatic preserve would place numerous restrictions upon the water body and would make it difficult to use it for the intended purpose of the Site 1 Project, which is essentially a water holding pond or an impoundment area. Staff recommends that the phrase "aquatic preserve" be removed from the bill and another appropriate designation be used.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 15, 2006, the Water and Natural Resources Committee adopted the bill with an amendment which removed the word "aquatic" from the bill.

CHAMBER ACTION

The Water & Natural Resources Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to the Fran Reich Preserve; designating the Site 1 Impoundment project of the Comprehensive Everglades Restoration Plan sponsored by the South Florida Water Management District as the Fran Reich Preserve; directing the South Florida Water Management District to erect suitable markers; providing an effective date.

WHEREAS, Fran Reich founded the West Boca Community Council and proudly served on the council as President, Chairman of the Board, and Chairman Emeritus, and

WHEREAS, Fran Reich was a dedicated activist who worked diligently to protect the communities of South Florida and to improve the lives of others, and

WHEREAS, Fran Reich successfully led the victory that protected and preserved the Loxahatchee Wildlife Refuge, and

WHEREAS, such effort and commitment generated a legacy of community awareness and involvement, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. Fran Reich Preserve designated; South Florida Water Management District to erect suitable markers.--

(1) The Site 1 Impoundment project of the Comprehensive Everglades Restoration Plan sponsored by the South Florida Water Management District is designated the "Fran Reich Preserve."

(2) The South Florida Water Management District is directed to erect suitable markers designating the Fran Reich Preserve as described in subsection (1).

Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1007 CS State Parks
SPONSOR(S): Proctor
TIED BILLS: **IDEN./SIM. BILLS:** SB 1638

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Military & Veteran Affairs Committee	8 Y, 0 N, w/CS	Marino	Cutchins
2) Tourism Committee	5 Y, 0 N	Langston	McDonald
3) Agriculture & Environment Appropriations Committee		Dixon	Dixon
4) State Administration Council			
5)			

SUMMARY ANALYSIS

The Committee Substitute for House Bill 1007 allows free, state park admission to active members of the Florida National Guard and their spouses and minor children upon submission of a valid active Florida National Guard member or dependent identification card.

The revenue impact to the Division of Recreation and Parks (division) is estimated to be a loss of approximately $100,621. The division, however, estimated a higher impact in its analysis.

The impact to the state from lost sales tax revenue from annual pass sales is indeterminate and expected to be minimal.

This committee substitute takes effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower Families – The Committee Substitute for House Bill 1007 benefits families of Florida National Guard members by allowing them to visit state parks together for free.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Under the Florida Department of Environmental Protection, the division operates and maintains 159 state parks, which cover 723,852 acres, with operating and capital budgets totaling around $105 million[1]. Park revenues during that time were approximately $36.77 million. Park admittance fees pay for about 35% of the operating costs of the state parks. Most of the rest of the revenues come from the Land Acquisition Trust Fund which is funded primarily from documentary stamp taxes.

In 2004-2005, 17.3 million people visited Florida's state parks, down from a record attendance year in 2003-2004 of 19.1 million[2]. The division attributed the decrease in attendance to the effects of the above normal hurricane activity that year.

Entrance or admission fees to state parks is charged per carload (up to eight people), and the amount of the fee is based upon the park to which visitors are entering. Park admission fees can range from $3 to $5. Individuals may purchase an annual pass if they visit the parks frequently at a cost of $43.40 (sales tax included), and families may purchase an annual pass for $85.80 (sales tax included). Approximately 31,900[3] annual passes were sold in 2004-2005.

The division states that the "Florida Park Service already allows the military free (state) park admission when requested[4]." The division further confirmed that this "unwritten policy[5]" extends to all military personnel, which includes active duty, reservists, and National Guardsmen, and that the military personnel usually call ahead or show ID at the entry point in order to take advantage of this policy.

Effect of Proposed Changes:

The Committee Substitute for House Bill 1007 appears to codify part of an existing policy within the division by allowing active members of the Florida National Guard (FNG), and their spouses and minor children, free state park admission upon submission of a valid active FNG member or dependent identification card. This committee substitute does not affect active duty and reserve members of the armed forces who would continue to pay for park entrance or be able to take advantage of the "unwritten policy" stated above. This committee substitute does not waive fees that entrants would pay for services such as overnight parking or renting campsites.

This committee substitute takes effect July 1, 2006.

C. SECTION DIRECTORY:

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[1] Communication with Bruce Deterding, Legislative Affairs Division of Recreation and Parks. Division of Recreation and Parks: Historical Data. February 23, 2006. Email on file with Committee on Military & Veteran Affairs.
[2] ib id.
[3] Communication with Bruce Deterding, Legislative Affairs Division of Recreation and Parks. February 22, 2006. Email on file with Committee on Military & Veteran Affairs.
[4] Department of Environmental Protection. Draft Bill Analysis 2006: HB 1007. March 10, 2006. On file with Committee on Military & Veteran Affairs.
[5] Conversation with Bruce Deterding, Legislative Affairs Division of Recreation and Parks. March 10, 2006.

Section 1. Creates an undesignated section in the law that allows active members of the FNG, and their spouses and minor children, to gain entry to a state park without paying the admission fee upon submission of a valid active FNG member or dependent identification card.

Section 2. Provides that this act shall take effect July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The potential loss to the division, using a simple average method, is approximately $100,621 if every FNG individual or family generated four carloads a year.

The state may lose an indeterminate and minimal amount of sales tax from lost annual pass sales ($5.80 per family annual pass and $3.40 per individual annual pass).

Considering, however that the "unwritten policy" does exist, the actual revenue impact could be considerably lower.

2. Expenditures:

There are no known or expected fiscal impacts on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

There are no known or expected fiscal impacts on local government revenues.

2. Expenditures:

There are no known or expected fiscal impacts on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

A family of an active FNG member could save $85.80 (sales tax included) per year if they normally purchased an annual pass, or they could save $3, $4, or $5 per visit, depending on the park, if they were not on an annual plan.

An active FNG individual could save $43.40 (sales tax included) per year if they normally purchased an annual pass, or they could save $3, $4, or $5 per visit, depending on the park, if they were not on an annual plan.

D. FISCAL COMMENTS:

To calculate the $100,621 fiscal impact, staff assumes that:

- The unwritten policy does not exist; and
- The average revenue per visitor is $2.13, which was calculated by dividing total revenue ($36,766,200) in 2004-2005 by total visitors (17,296,273) in 2004-2005; and
- The number of unique FNG carloads corresponds to the current strength of the FNG (11,810[6]); and
- Each unique carload visits a state park four times in a year; and

[6] Conversation with Glenn Sutphin, Legislative Director Florida Department of Military Affairs. January 12, 2006.

- The percent of annual passes is negligible to the calculations, since if all 31,900 annual pass visitors made 20 trips (approximate number of trips necessary to gain full value of pass cost) to the parks that would only be about 3% of the total 17.3 million visitors.

Therefore, the number of unique carloads multiplied by four visits in a year multiplied by the average revenue per visitor equals approximately $100,621[7].

The division estimates a revenue impact of $1.2 million[8]. However, they assumed that the current FNG strength was 15,000 and that each FNG would be equivalent to the loss of the $80 family annual pass. Demographic analysis shows approximately 57.7% of FNG members have family responsibilities, so the remaining 42.3% would be more likely to purchase the $40 individual annual pass under the division's assumptions.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The committee substitute does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other:

   There do not appear to be any constitutional issues with this bill.

B. RULE-MAKING AUTHORITY:

This committee substitute does not appear to grant any rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 15, 2006, the Committee on Military & Veteran Affairs adopted an amendment that requires the submission of a valid active FNG member or dependent identification card in order for a person or family to gain the free admission to a state park provided for in the bill. The committee then voted to report the committee substitute favorably by a vote of 8 to 0.

[7] (11,810 x 4 x $2.13)

[8] Department of Environmental Protection. Draft Bill Analysis 2006: HB 1007. March 10, 2006. On file with Committee on Military & Veteran Affairs.

CHAMBER ACTION

The Military & Veteran Affairs Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to state parks; providing members of the Florida National Guard and certain relatives of such members free entrance to state parks; requiring presentation of certain identification as a condition for free entrance; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. A person who is a member of the Florida National Guard, and the spouse and minor children of such a person, shall not be charged a fee for admission to a state park upon presentation of a valid, active Florida National Guard member or dependent identification card.

Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1015 CS Agricultural Economic Development
SPONSOR(S): Pickens and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1880

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture Committee	9 Y, 0 N, w/CS	Kaiser	Reese
2) Agriculture & Environment Appropriations Committee		Davis	Dixon
3) State Resources Council			
4)			
5)			

SUMMARY ANALYSIS

HB 1015 reduces the notice period from 180 days to 90 days for property classified as agricultural under the Bert Harris Private Property Rights Protection Act.

The bill establishes an "agricultural enclave" designation and authorizes the landowners of such to apply for a comprehensive plan amendment (CPA) that includes land uses and intensities of use consistent with uses and intensities of use of surrounding industrial, commercial, or residential uses. The bill stipulates the property must meet Greenbelt criteria, have been in agricultural production for the past five years and meet additional criteria. An agricultural enclave may not exceed 2,560 acres, unless the property has been determined to be urban or suburban by the Department of Community Affairs (DCA), in which case it may not exceed 5,120 acres. The bill exempts the CPA from certain rules of the DCA relating to urban sprawl.

The bill provides for good faith negotiations between the local government and landowner, with certain criteria to be met regarding the negotiations. Upon completion of negotiations, regardless of the outcome, the CPA must be transmitted to the DCA for review at the first available transmittal cycle. The bill forbids the DCA from using certain rules relating to urban sprawl as a factor in determining compliance of a CPA. If the landowner fails to negotiate in good faith, all DCA rules relating to urban sprawl apply to the CPA. The bill states, "Nothing relating to amendments to local comprehensive plans in regards to agricultural enclaves shall preempt or replace any protection currently existing for any property located within the boundaries of the Wekiva Study Area or the Everglades Protection Area."

The bill provides economic protection to an agricultural lessee when property for which an agricultural lease exists is purchased by the state or an agency of the state. The bill requires the purchasing agency to allow the lease to remain in full force for the remainder of the lease term. Where consistent with the purposes for which the property was acquired, the purchasing agency must make reasonable efforts to keep lands in agricultural production which are in agricultural production at the time of the purchase.

The bill establishes in law that agricultural self-supplied water users have limitations on their ability to develop alternative water supplies. Furthermore, the bill requires water management districts to notify agricultural applicants for consumptive use permits of the right to apply for permits valid for 20 years.

By July 1, 2007, the bill requires each water management district to enter into a memorandum of agreement (MOA) with the Department of Agriculture and Consumer Services (DACS) to determine whether an existing or proposed activity qualifies for the agricultural wetlands exemptions set forth in law.

The bill does not appear to have a fiscal impact requiring new state expenditures. The effective date of this legislation is upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty: The bill creates a process for owners of agricultural enclaves to request comprehensive plan amendments allowing land uses and intensities of use consistent with uses and intensities of use of surrounding industrial, commercial, or residential uses. The bill provides economic protection to an agricultural lessee when property for which an agricultural lease exists is purchased by the state or an agency of the state. Additionally, the bill reduces the notice period from 180 days to 90 days for property classified as agricultural under the Bert Harris Private Property Rights Protection Act.

B. EFFECT OF PROPOSED CHANGES:

Bert Harris Private Property Rights Protection Act
Currently, s. 70.001, F.S., sets forth the Bert Harris Act, which provides relief to property owners in instances where a specific action of a governmental entity has inordinately burdened the use of real property under circumstances that do not amount to a taking but result in the owner being permanently unable to attain the reasonable investment-backed expectation for the property. A 180-day time period is required between filing of a claim and the filing of an action to allow the government to make a written settlement offer. There is no special treatment for agricultural land which has been rezoned or subjected to a designation which lowers residential density. The bill reduces the time period from 180 days to 90 days.

Agricultural Enclaves
The Local Government Comprehensive Planning and Land Development Regulation Act of 1985 (act)[1] establishes a growth management system in Florida which requires each local government (or combination of local governments) to adopt a plan, capital improvements, and an intergovernmental coordination element. The local government comprehensive plan is intended to be the policy document guiding local governments in land use decision-making. Section 163.3184, F.S., sets forth certain requirements that must be met in the adoption of a comprehensive plan or plan amendment. The act contains a special designation and specific provisions relating to an urban infill and redevelopment area. However, there is neither a designation of property as an "agricultural enclave" nor any special provisions pertaining to such an area.

The bill establishes an "agricultural enclave" designation and authorizes the landowners of such to apply for a comprehensive plan amendment (CPA) that includes land uses and intensities of use consistent with uses and intensities of use of surrounding industrial, commercial, or residential uses. The property must meet Greenbelt criteria and have been in agricultural production for the past five years. An agricultural enclave is defined as an unincorporated, undeveloped parcel that:

- Is owned by a single person or entity'
- Has been in continuous use for bona fide agricultural purposes, as defined by statute[2] for a period of 5 years prior to the date of any comprehensive plan amendment application;
- Is surrounded on at least 75 percent of its perimeter by:
  - Property that has existing industrial, commercial, or residential development; or
  - Property that the local government has designated, in the local government's comprehensive plan, zoning map, and future land use map, as land that is to be developed for industrial, commercial, or residential purposes, and at least 75 percent of such property is existing industrial, commercial, or residential development;

[1] ss. 163.3161-163.3244, F.S.
[2] s. 193.461, F.S.

- Has public services, including water, wastewater, transportation, schools, and recreation facilities, available or such public services are scheduled to be provided by the local government or by a alternative provider of local government infrastructure consistent with applicable concurrency provisions of s. 163.3180, F.S.; and
- Does not exceed 2,560 acres, however, if the property has been determined to be urban or suburban by the state land planning agency, the parcel may not exceed 5,120 acres.

The bill provides for good faith negotiations between the local government and landowner. The negotiation period is set for 180 days following the date the local government receives an application for a CPA. The bill requires, within 30 days of receipt by the local government of the application, for the local government and landowner to agree, in writing, to a schedule for information submittal, public hearings, negotiations, and final action on the CPA. This schedule may only be changed with the written consent of the local government and the landowner. Compliance with the schedule in written agreement constitutes good faith negotiations.

Upon completion of negotiations, regardless of the outcome, the CPA must be transmitted to the DCA for review at the first available transmittal cycle. The bill forbids the DCA from using certain rules relating to urban sprawl as a factor in determining compliance of a CPA.[3] If the landowner fails to negotiate in good faith, all rules of the DCA relating to urban sprawl apply to the CPA.

The bill states, "Nothing relating to amendments to local comprehensive plans in regards to agricultural enclaves shall preempt or replace any protection currently existing for any property located within the boundaries of the Wekiva Study Area or the Everglades Protection Area."

Land Acquisition

Chapter 259, F.S., is entitled "Land Acquisitions for Conservation and Recreation," and contains Florida's nationally recognized land acquisition programs:

- Conservation and Recreation Lands (CARL),
- Preservation 2000 (P2000), and
- Florida Forever.

The CARL program was created by the Legislature in 1979 to acquire and manage public lands and to conserve and protect environmentally unique and irreplaceable lands and lands of critical state concern. Documentary stamp tax revenues were deposited into the CARL Trust Fund to accomplish the program's purchases. The CARL program was replaced by the P2000 and Florida Forever program. Today, the CARL Trust Fund still receives documentary stamp tax and phosphate severance tax revenue which is used to manage conservation and recreation lands. However, it is not to be used for land acquisition without explicit permission from the Board of Trustees of the Internal Improvements Trust Fund.

The P2000 program was created in 1990 as a $3 billion land acquisition program funded through the annual sales of bonds. Each year for 10 years, the majority of $300 million in bond proceeds, less the cost of issuance, was distributed to the Department of Environmental Protection (DEP) for the purchase of environmental lands on the CARL list, the five water management districts for the purchase of water management lands, and the Department of Community Affairs for land acquisition loans and grants to local governments under the Florida Communities Trust Program. The Division of Forestry at the Department of Agriculture and Consumer Services (DACS) received P2000 funds as one of the smaller state acquisition programs.

The Florida Forever program was enacted by the Legislature in 1999 as a successor program to P2000. Florida Forever authorizes the issuance of not more than $3 billion in bonds over a 10-year period for land acquisition, water resource development projects, the preservation and restoration of open space and greenways, and for outdoor recreation purposes. Until the Florida Forever program

[3] *Id.*

was established, the title to lands purchased under the state's acquisition programs vested in the Board of Trustees of the Internal Improvement Trust Fund. Under Florida Forever, the Legislature provided public land acquisition agencies with authority to purchase eligible properties using alternatives to fee simple acquisitions. These "less than fee" acquisitions are one method of allowing agricultural lands to remain in production while preventing development on those lands. Public land acquisition agencies with remaining P2000 funds were also encouraged to pursue "less than fee" acquisitions.

The bill provides economic protection to an agricultural lessee when property, which has an agricultural lease, is purchased by the state or an agency of the state. The bill requires the purchasing agent to allow the lease to remain in full force for the remainder of the lease term. In addition, where consistent with the purposes for which the property was acquired, the purchasing agent must make reasonable efforts to keep in agricultural production lands which are in agricultural production at the time of purchase.

Regional Water Supply Planning
In the mid-1990's, when it became apparent that chief groundwater sources may not be sufficient to sustain Florida's population, the five water management districts were charged with developing regional water supply plans. Florida law [4] requires the plan to be conducted in an open public process, in coordination and cooperation with local governments, regional water supply authorities, government-owned and privately-owned water utilities, multijurisdictional water supply entities, self-suppliers, and other affected and interested parties.

The bill establishes that agricultural self-supplied water users have limitations on their ability to develop alternative water supplies.

Consumptive Use Permits
Water use permits can be issued to non-government individuals or entities for a period of up to 20 years, but some applicants are not aware that they may request a 20-year permit for renewals as well as the initial permit. The bill requires water management districts to notify agricultural applicants for consumptive use permits of their right to apply for permits valid for 20 years.

Memorandum of Agreement for Agricultural Related Exemption
Section 373.406(2), F.S., provides an exemption to persons engaged in the occupation of agriculture, silviculture, floriculture, or horticulture to alter the topography of any tract of land for purposes consistent with the practice of such occupation. The law further states such alteration may not be for the sole or predominant purpose of impounding or obstructing surface waters.

The bill establishes a process by which each water management district enters into a memorandum of agreement (MOA) with the Department of Agriculture and Consumer Services (DACS) to determine whether an existing or proposed activity qualifies for the agricultural wetlands exemption set forth in s. 373.406(2), F.S.

C. SECTION DIRECTORY:

Section 1: Amends s. 70.001, F.S.; amending notice period for filing action.

Section 2: Amends s. 163.3162, F.S.; providing for owner of land classified as an agricultural enclave to apply for an amendment to the comprehensive plan; providing requirements relating to applications; and, exempting certain amendments from specific rules of the Department of Community Affairs under certain circumstances.

Section 3: Amends s. 163.3164, F.S.; providing a definition for agricultural enclave.

[4] s. 373.0361, F.S.

Section 4: Creates s. 259.047, F.S.; providing requirements relating to purchase of land on which an agricultural lease exists.

Section 5: Amending s. 373.0361, F.S.; recognizing that water source options for agricultural self-suppliers are limited.

Section 6: Amending s. 373.2234, F.S.; correcting a cross reference.

Section 7: Amending s. 373.236, F.S.; requiring water management districts to inform landowners of the option to obtain certain consumptive use permits.

Section 8: Amending s. 373.407, F.S.; providing for memoranda of agreement regarding qualification for agricultural-related exemptions.

Section 9: Providing an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Indeterminate. See fiscal comments below.

2. Expenditures:

   See fiscal comments below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   Indeterminate. It is unknown whether this bill will require local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Not discernable

D. FISCAL COMMENTS:

According to the Department of Agriculture and Consumer Services (DACS), this bill should have no significant impact on the Division of Forestry. Some revenue would be received from existing agricultural production leases when that land is acquired as a state forest. The actual revenue cannot be determined at this time as it is not known what existing agricultural leases will be a part of future state forest acquisitions.

Section 8 of the bill addresses the development of a memorandum of agreement between DACS and each water management district in which DACS would conduct a review to determine exemptions from existing statute. DACS states that this review, involving the Office of Water Policy, would have no fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   It is not known whether this bill will require counties or municipalities to take action requiring the expenditure of funds. It does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate or appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None

B. RULE-MAKING AUTHORITY:

   None

C. DRAFTING ISSUES OR OTHER COMMENTS:

   As currently drafted, section 163.3162(5)(c), F.S., dealing with the preemption for property located within the boundaries of the Wekiva Study Area or the Everglades Protection Area, is ambiguous as to legislative intent.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 22, 2006, the Committee on Agriculture adopted two amendments to HB 1015. **Amendment 1** amended the procedure for applying for a comprehensive plan amendment, which is now the same for anyone seeking to establish an agricultural enclave. **Amendment 2** amended the definition of an "agricultural enclave" to have only one acreage designation rather than two.

CHAMBER ACTION

The Agriculture Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to agricultural economic development; amending s. 70.001, F.S.; providing a deadline for an owner of agricultural land to present a claim prior to filing an action against a governmental entity regarding private property rights; amending s. 163.3162, F.S.; providing for application for an amendment to the local government comprehensive plan by the owner of land that meets certain provisions of the definition of an agricultural enclave; providing requirements relating to such applications; exempting certain amendments from specified rules of the Department of Community Affairs under certain circumstances; amending s. 163.3164, F.S.; defining the term "agricultural enclave" for purposes of the Local Government Comprehensive Planning and Land Development Regulation Act; creating s. 259.047, F.S.; providing requirements relating to the purchase of land on which an agricultural lease exists; amending s. 373.0361, F.S.; providing for recognition that alternative water

supply development options for agricultural self-suppliers are limited; amending s. 373.2234, F.S.; conforming a cross-reference; amending s. 373.236, F.S.; requiring water management districts to inform landowners of the option to obtain certain consumptive use permits; creating s. 373.407, F.S.; providing for memoranda of agreement regarding qualification for agricultural-related exemptions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (a) and (c) of subsection (4), paragraph (a) of subsection (5), and paragraph (c) of subsection (6) of section 70.001, Florida Statutes, are amended to read:

70.001 Private property rights protection.--

(4)(a) Not less than 180 days prior to filing an action under this section against a governmental entity, a property owner who seeks compensation under this section must present the claim in writing to the head of the governmental entity, except that if the property is classified as agricultural pursuant to s. 193.461, the notice period is 90 days. The property owner must submit, along with the claim, a bona fide, valid appraisal that supports the claim and demonstrates the loss in fair market value to the real property. If the action of government is the culmination of a process that involves more than one governmental entity, or if a complete resolution of all relevant issues, in the view of the property owner or in the view of a governmental entity to whom a claim is presented, requires the

active participation of more than one governmental entity, the property owner shall present the claim as provided in this section to each of the governmental entities.

(c) During the 90-day-notice period or the 180-day-notice period, unless extended by agreement of the parties, the governmental entity shall make a written settlement offer to effectuate:

1. An adjustment of land development or permit standards or other provisions controlling the development or use of land.

2. Increases or modifications in the density, intensity, or use of areas of development.

3. The transfer of developmental rights.

4. Land swaps or exchanges.

5. Mitigation, including payments in lieu of onsite mitigation.

6. Location on the least sensitive portion of the property.

7. Conditioning the amount of development or use permitted.

8. A requirement that issues be addressed on a more comprehensive basis than a single proposed use or development.

9. Issuance of the development order, a variance, special exception, or other extraordinary relief.

10. Purchase of the real property, or an interest therein, by an appropriate governmental entity.

11. No changes to the action of the governmental entity.

If the property owner accepts the settlement offer, the governmental entity may implement the settlement offer by appropriate development agreement; by issuing a variance, special exception, or other extraordinary relief; or by other appropriate method, subject to paragraph (d).

(5)(a) During the 90-day-notice period or the 180-day-notice period, unless a settlement offer is accepted by the property owner, each of the governmental entities provided notice pursuant to paragraph (4)(a) shall issue a written ripeness decision identifying the allowable uses to which the subject property may be put. The failure of the governmental entity to issue a written ripeness decision during the applicable 90-day-notice period or 180-day-notice period shall be deemed to ripen the prior action of the governmental entity, and shall operate as a ripeness decision that has been rejected by the property owner. The ripeness decision, as a matter of law, constitutes the last prerequisite to judicial review, and the matter shall be deemed ripe or final for the purposes of the judicial proceeding created by this section, notwithstanding the availability of other administrative remedies.

(6)

(c)1. In any action filed pursuant to this section, the property owner is entitled to recover reasonable costs and attorney fees incurred by the property owner, from the governmental entity or entities, according to their proportionate share as determined by the court, from the date of the filing of the circuit court action, if the property owner prevails in the action and the court determines that the

settlement offer, including the ripeness decision, of the governmental entity or entities did not constitute a bona fide offer to the property owner which reasonably would have resolved the claim, based upon the knowledge available to the governmental entity or entities and the property owner during the 90-day-notice period or the 180-day-notice period.

2. In any action filed pursuant to this section, the governmental entity or entities are entitled to recover reasonable costs and attorney fees incurred by the governmental entity or entities from the date of the filing of the circuit court action, if the governmental entity or entities prevail in the action and the court determines that the property owner did not accept a bona fide settlement offer, including the ripeness decision, which reasonably would have resolved the claim fairly to the property owner if the settlement offer had been accepted by the property owner, based upon the knowledge available to the governmental entity or entities and the property owner during the 90-day-notice period or the 180-day-notice period.

3. The determination of total reasonable costs and attorney fees pursuant to this paragraph shall be made by the court and not by the jury. Any proposed settlement offer or any proposed ripeness decision, except for the final written settlement offer or the final written ripeness decision, and any negotiations or rejections in regard to the formulation either of the settlement offer or the ripeness decision, are inadmissible in the subsequent proceeding established by this section except for the purposes of the determination pursuant to this paragraph.

Section 2. Subsection (5) is added to section 163.3162, Florida Statutes, to read:

163.3162 Agricultural Lands and Practices Act.--

(5) AMENDMENT TO LOCAL GOVERNMENT COMPREHENSIVE PLAN.--The owner of a parcel of land defined as an agricultural enclave under s. 163.3164(33) may apply for an amendment to the local government comprehensive plan pursuant to s. 163.3187. Such amendment is not subject to rule 9J-5.006(5), Florida Administrative Code, and may include land uses and intensities of use that are consistent with the uses and intensities of use of the industrial, commercial, or residential areas that surround the parcel.

(a) The local government and the owner of a parcel of land that is the subject of an application for an amendment shall have 180 days following the date that the local government receives an application to negotiate in good faith to reach consensus on the land uses and intensities of use that are consistent with the uses and intensities of use of the industrial, commercial, or residential areas that surround the parcel. Within 30 days after the local government's receipt of such an application, the local government and owner must agree in writing to a schedule for information submittal, public hearings, negotiations, and final action on the amendment, which schedule may thereafter be altered only with the written consent of the local government and the owner. Compliance with the schedule in the written agreement constitutes good-faith negotiations for purposes of paragraph (c).

(b) Upon conclusion of good-faith negotiations under paragraph (a), regardless of whether the local government and owner reach consensus on the land uses and intensities of use that are consistent with the uses and intensities of use of the industrial, commercial, or residential areas that surround the parcel, the amendment must be transmitted to the state land planning agency for review pursuant to s. 163.3184. If the local government fails to transmit the amendment within 180 days after receipt of an application, the amendment must be immediately transferred to the state land planning agency for such review at the first available transmittal cycle. The state land planning agency may not use any provision of rule 9J-5.006(5), Florida Administrative Code, as a factor in determining compliance of an amendment.

(c) If the owner fails to negotiate in good faith, rule 9J-5.006(5), Florida Administrative Code, shall apply throughout the negotiation and amendment process.

(d) Nothing within this subsection relating to agricultural enclaves shall preempt or replace any protection currently existing for any property located within the boundaries of the following areas:

1. The Wekiva Study Area, as described in s. 369.316; or

2. The Everglades Protection Area, as defined in s. 373.4592(2).

Section 3. Subsection (33) is added to section 163.3164, Florida Statutes, to read:

163.3164 Local Government Comprehensive Planning and Land Development Regulation Act; definitions.--As used in this act:

(33) "Agricultural enclave" means an unincorporated, undeveloped parcel that:

(a) Is owned by a single person or entity;

(b) Has been in continuous use for bona fide agricultural purposes, as defined by s. 193.461, for a period of 5 years prior to the date of any comprehensive plan amendment application;

(c) Is surrounded on at least 75 percent of its perimeter by:

1. Property that has existing industrial, commercial, or residential development; or

2. Property that the local government has designated, in the local government's comprehensive plan, zoning map, and future land use map, as land that is to be developed for industrial, commercial, or residential purposes, and at least 75 percent of such property is existing industrial, commercial, or residential development;

(d) Has public services, including water, wastewater, transportation, schools, and recreation facilities, available or such public services are scheduled to be provided by the local government or by an alternative provider of local government infrastructure consistent with applicable concurrency provisions of s. 163.3180; and

(e) Does not exceed 2,560 acres; however, if the property has been determined to be urban or suburban by the state land planning agency, the parcel may not exceed 5,120 acres.

Section 4. Section 259.047, Florida Statutes, is created to read:

259.047 Acquisition of land on which an agricultural lease exists.--

(1) When land with an existing agricultural lease is acquired in fee simple pursuant to this chapter or chapter 375, the existing agricultural lease may continue in force for the actual time remaining on the lease agreement. Any entity managing lands acquired under this section must consider existing agricultural leases in the development of a land management plan required under s. 253.034.

(2) Where consistent with the purposes for which the property was acquired, the state or acquiring entity shall make reasonable efforts to keep lands in agricultural production which are in agricultural production at the time of acquisition.

Section 5. Paragraph (a) of subsection (2) of section 373.0361, Florida Statutes, is amended to read:

373.0361 Regional water supply planning.--

(2) Each regional water supply plan shall be based on at least a 20-year planning period and shall include, but need not be limited to:

(a) A water supply development component for each water supply planning region identified by the district which includes:

1. A quantification of the water supply needs for all existing and future reasonable-beneficial uses within the planning horizon. The level-of-certainty planning goal associated with identifying the water supply needs of existing and future reasonable-beneficial uses shall be based upon meeting those needs for a 1-in-10-year drought event. Population

projections used for determining public water supply needs must be based upon the best available data. In determining the best available data, the district shall consider the University of Florida's Bureau of Economic and Business Research (BEBR) medium population projections and any population projection data and analysis submitted by a local government pursuant to the public workshop described in subsection (1) if the data and analysis support the local government's comprehensive plan. Any adjustment of or deviation from the BEBR projections must be fully described, and the original BEBR data must be presented along with the adjusted data.

2. A list of water supply development project options, including traditional and alternative water supply project options, from which local government, government-owned and privately owned utilities, regional water supply authorities, multijurisdictional water supply entities, self-suppliers, and others may choose for water supply development. In addition to projects listed by the district, such users may propose specific projects for inclusion in the list of alternative water supply projects. If such users propose a project to be listed as an alternative water supply project, the district shall determine whether it meets the goals of the plan, and, if so, it shall be included in the list. The total capacity of the projects included in the plan shall exceed the needs identified in subparagraph 1. and shall take into account water conservation and other demand management measures, as well as water resources constraints, including adopted minimum flows and levels and water reservations. Where the district determines it is

appropriate, the plan should specifically identify the need for multijurisdictional approaches to project options that, based on planning level analysis, are appropriate to supply the intended uses and that, based on such analysis, appear to be permittable and financially and technically feasible. The list of water supply development options must contain provisions that recognize that alternative water supply options for agricultural self-suppliers are limited.

3. For each project option identified in subparagraph 2., the following shall be provided:

a. An estimate of the amount of water to become available through the project.

b. The timeframe in which the project option should be implemented and the estimated planning-level costs for capital investment and operating and maintaining the project.

c. An analysis of funding needs and sources of possible funding options. For alternative water supply projects the water management districts shall provide funding assistance in accordance with s. 373.1961(3).

d. Identification of the entity that should implement each project option and the current status of project implementation.

Section 6. Section 373.2234, Florida Statutes, is amended to read:

373.2234 Preferred water supply sources.--The governing board of a water management district is authorized to adopt rules that identify preferred water supply sources for consumptive uses for which there is sufficient data to establish that a preferred source will provide a substantial new water

supply to meet the existing and projected reasonable-beneficial uses of a water supply planning region identified pursuant to s. 373.0361(1), while sustaining existing water resources and natural systems. At a minimum, such rules must contain a description of the preferred water supply source and an assessment of the water the preferred source is projected to produce. If an applicant proposes to use a preferred water supply source, that applicant's proposed water use is subject to s. 373.223(1), except that the proposed use of a preferred water supply source must be considered by a water management district when determining whether a permit applicant's proposed use of water is consistent with the public interest pursuant to s. 373.223(1)(c). A consumptive use permit issued for the use of a preferred water supply source must be granted, when requested by the applicant, for at least a 20-year period and may be subject to the compliance reporting provisions of s. 373.236(4) ~~(3)~~. Nothing in this section shall be construed to exempt the use of preferred water supply sources from the provisions of ss. 373.016(4) and 373.223(2) and (3), or be construed to provide that permits issued for the use of a nonpreferred water supply source must be issued for a duration of less than 20 years or that the use of a nonpreferred water supply source is not consistent with the public interest. Additionally, nothing in this section shall be interpreted to require the use of a preferred water supply source or to restrict or prohibit the use of a nonpreferred water supply source. Rules adopted by the governing board of a water management district to implement this section shall specify that the use of a preferred water supply

source is not required and that the use of a nonpreferred water supply source is not restricted or prohibited.

Section 7. Present subsections (2) and (3) of section 373.236, Florida Statutes, are renumbered as subsections (3) and (4), respectively, present subsection (4) is renumbered as subsection (5) and amended, and a new subsection (2) is added to that section, to read:

373.236 Duration of permits; compliance reports.--

(2) The Legislature finds that some agricultural landowners remain unaware of their ability to request a 20-year consumptive use permit under subsection (1) for initial permits or for renewals. Therefore, the water management districts shall inform agricultural applicants of this option in the application form.

(5) ~~(4)~~ Permits approved for the development of alternative water supplies shall be granted for a term of at least 20 years. However, if the permittee issues bonds for the construction of the project, upon request of the permittee prior to the expiration of the permit, that permit shall be extended for such additional time as is required for the retirement of bonds, not including any refunding or refinancing of such bonds, provided that the governing board determines that the use will continue to meet the conditions for the issuance of the permit. Such a permit is subject to compliance reports under subsection (4) ~~(3)~~.

Section 8. Section 373.407, Florida Statutes, is created to read:

373.407 Memorandum of agreement for an agricultural-related exemption.--No later than July 1, 2007, the Department

of Agriculture and Consumer Services and each water management district shall enter into a memorandum of agreement under which the Department of Agricultural and Consumer Services shall assist in a determination by a water management district as to whether an existing or proposed activity qualifies for the exemption in s. 373.406(2). The memorandum of agreement shall provide a process by which, upon the request of a water management district, the Department of Agriculture and Consumer Services shall conduct a nonbinding review as to whether an existing or proposed activity qualifies for an agricultural-related exemption in s. 373.406(2). The memorandum of agreement shall provide processes and procedures by which the Department of Agriculture and Consumer Services shall undertake this review effectively and efficiently and issue a recommendation.

Section 9. This act shall take effect upon becoming a law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. **HB 1015 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Agriculture & Environment Appropriations Committee

Representative(s) Pickens offered the following:

Amendment

Remove line(s) 214-215 and insert:

has existing or authorized residential development that will result in a density at build out of at least 1,000 residents per square mile, then the area shall be determined to be urban and the parcel may not exceed 5,120 acres.

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1155 Contaminated Drycleaning Facilities
SPONSOR(S): Evers
TIED BILLS: **IDEN./SIM. BILLS:** SB 2174

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Environmental Regulation Committee	5 Y, 0 N	Kliner	Kliner
2) Agriculture & Environment Appropriations Committee		Dixon	Dixon
3) State Resources Council			
4)			
5)			

SUMMARY ANALYSIS

The bill will effectively re-open the Drycleaning Solvent Cleanup Program (the DSC Program) for a person who owns or operates (or owned or operated) a dry cleaning facility where there is contamination at the site as a result of an accident that occurred prior to January 1, 1975. "Accident" is defined as an unplanned and unanticipated occurrence beyond the control of the owner or operator that resulted in (1) physical damage to the facility and (2) contamination of the site that may reasonably be determined to have been caused by, or exacerbated by, actions of responders to the occurrence.

The DSC Program would be re-opened to persons whether or not they filed an application of eligibility on or before December 31, 1998, which is the termination date of the DSC Program whereby no cleanup costs would be absorbed at the expense of the dry cleaning restoration funds.

The fiscal impact is indeterminate. The Department of Environmental Protection (the DEP) knows of just one contaminated site that is not included in the program that may be eligible under the proposed law. There is no meaningful way to estimate how many claims of this type could be filed in the future resulting from accidents that occurred as contemplated by the bill language.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promotes Personal Responsibility: This bill effectively re-opens the Drycleaning Solvent Cleanup Program (the DSC Program) for a person who owns or operates (or owned or operated) a dry cleaning facility and there is contamination at the site as a result of an accident.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Dry Cleaning Generally:
Dry-cleaners are facilities engaged in the cleaning of fabrics in a nonaqueous solvent by means of one or more washes in a solvent, extraction of excess solvent by spinning, and drying by tumbling in an airstream. Such facilities include a washer, dryer, filter, and purification systems, emission control equipment, waste disposal systems, holding tanks, pumps and attendant piping and valves.

Dry-cleaning facilities utilizing the solvent perchloroethylene, or "perc," which is considered an air toxic or hazardous pollutant, are eligible to operate as a business in Florida under the terms of a Title V air permit pursuant to the requirements of Chapter 62-213, Florida Administrative Code.

Drycleaning Solvent Cleanup Program History:
In 1994, the Legislature enacted Chapter 94-355, Laws of Florida., to provide a source of funding for rehabilitation of sites and drinking water supplies contaminated by dry cleaning solvents. The act provided for the establishment of a registration program under which dry-cleaning facilities and wholesale suppliers were to register by June 30, 1995.

The DSC Program is administered by the DEP. Eligibility criteria for participation are as follows:

- The facility must have registered with the DEP.
- The facility was determined to have complied with the DEP rules.
- The facility was not operated in a grossly negligent manner.
- The facility was not listed on the Federal "Superfund" list.
- The facility was not under orders from the U. S. Environmental Protection Agency (EPA) and was not required to have a hazardous waste permit.

Further, the real property owner or the owner or operator of the dry cleaning facility or the wholesale supply facility must not have willfully concealed the discharge of dry-cleaning solvents, must have remitted all taxes due, must have provided evidence of contamination by dry cleaning solvents pursuant to DEP rules, and must have reported the contamination prior to December 31, 2005.

Generally, the program provides that the cleanup costs are to be absorbed at the expense of the dry cleaning funds available in the Water Quality Assurance Trust Fund. Deductibles are paid by the applicant as follows:

- For contamination reported by 6/30/97 -- $1,000 per incident.
- For contamination reported from 7/1/97 thru 9/30/98 -- $5,000 per incident.
- For contamination reported from 10/1/98 thru 12/31/98 -- $10,000 per incident.

For contamination reported after December 31, 1998, no cleanup costs will be absorbed at the expense of the dry cleaning restoration funds. In other words, contamination reported after this date will be cleaned up at the expense of the reporting entity.

Liability Protection is Provided Under the Program:
Dry-cleaning facility owners or operators, wholesale supply facilities, and real property owners are afforded certain liability protections and are not subject to administrative or judicial action brought by or on behalf of any person, or state or local government, for perc discharges provided certain specified conditions are met. Each owner or operator of a currently operating dry cleaning facility must obtain third-party liability insurance for $1 million.

A real property owner may conduct a voluntary cleanup pursuant to DEP rules whether or not the facility has been determined by the DEP to be eligible for the program. A real property owner or any other party that conducts such voluntary cleanup may not seek cost recovery from the program funds, but is immune from liability to any person, or state or local government, to compel site rehabilitation or pay for the cost of rehabilitation of environmental contamination, or to pay any fines or penalties regarding rehabilitation, so long as the real property owner complies with certain specified conditions.

Funding the Program
Funding for the program comes from three main sources:

- A two percent tax on gross receipts on businesses engaged in dry-cleaning and laundering,
- A $5 per gallon tax on perc sold to facilities in the state, a deductible payment based on the date of application for the program, and
- A $100 registration fee collected from the facilities.

According to the DEP, the annual collections have averaged $7.6 million. There are over 1,400 sites in the closed program and at the current rate of clean-up, it will take over 60 years to clean up all sites.

Effect of Proposed Changes

The bill will effectively re-open the DSC Program for a person who owns or operates (or owned or operated) a dry-cleaning facility where there is (or was) contamination at the site as a result of an accident which occurred prior to January 1, 1975. "Accident" is defined as an unplanned and unanticipated occurrence beyond the control of the owner or operator that resulted in (1) physical damage to the facility and (2) contamination of the site that may reasonably be determined to have been caused by, or exacerbated by, actions of responders to the occurrence.

The DSC Program would be re-opened to persons whether or not they filed an application of eligibility on or before December 31, 1998, which is the termination date of the program whereby no cleanup costs would be absorbed at the expense of the dry cleaning restoration funds.

> Example 1: On April 6, 2004, a dump truck driver sets the parking brake and leaves the cab of his vehicle to check his load. The braking system fails and the truck rolls down a hill and crashes into the Pressed 4 Time dry-cleaning facility, extensively damaging the building and breaching the perc storage container. The spill is otherwise controlled by the containment system that was installed by the owner; however, the firemen responding to the accident hoses down the site which results in a perc contamination of the surrounding land area. Under the proposed law, the Pressed 4 Time owner/operator would not be permitted to submit the site for cleanup under the otherwise closed program.

Example 2: The same scenario as above, except the date of the accident occurred on April 6, 1974. The owner did not file an application under the program. Under the proposed law, the owner would be eligible for cleanup under the otherwise closed program.

Example 3: The same scenario as above, except that the responders do not hose down the site and do not exacerbate the spill. As such, the conditions do not permit eligibility into the program and any contamination will be the responsibility of the owner/operator.

C. SECTION DIRECTORY:

Section 1 Amends s. 376.3078, Florida Statutes, adding a new paragraph (i) to subsection (3), and redesignating all subsequent paragraphs, providing that a dry-cleaning facility where there exists contamination as a result of an accident that occurred prior to January 1, 1975, is eligible under the DSC Program, regardless of whether an application for eligibility was filed on or before the termination date of the program. This section also provides a definition of the term "accident."

Section 2 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill would re-open the DSC Program for an owner or operator of a dry cleaning facility with contamination that is the result of an accident that occurred prior to January 1, 1975, and which the contamination was caused or exacerbated by responders to the accident.

D. FISCAL COMMENTS:

The program originally provided for deductibles paid by the applicant. The deductible amounts varied in cost from $1,000 to $10,000, depending on the date the application was filed. The bill does not provide for deductibles so it is assumed that the entire cost of the cleanup would be borne by the trust fund.

Clean-up of a contaminated facility can range from approximately $30,000 to $2 million; the average cost being approximately $475,000. The DEP knows of only one incident whereby an auto accident and the actions of responders exacerbated a spill of perc. The site in question is not currently eligible

for inclusion in the program for clean-up. The DEP has no record of how many other potential sites may be affected by this proposed legislation. According to the DEP, if the program is not reopened as envisioned by the bill and under current funding levels, the clean-up will take approximately 60 years.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

No rulemaking authority is required to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to contaminated drycleaning facilities; amending s. 376.3078, F.S.; providing that contaminated drycleaning facilities damaged by accident prior to a specified date are eligible for state-funded site rehabilitation; defining the term "accident"; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (3) of section 376.3078, Florida Statutes, is amended to read:

376.3078 Drycleaning facility restoration; funds; uses; liability; recovery of expenditures.--

(3) REHABILITATION LIABILITY.--

(a) In accordance with the eligibility provisions of this section, a real property owner, nearby real property owner, or person who owns or operates, or who otherwise could be liable as a result of the operation of, a drycleaning facility or a wholesale supply facility is not liable for or subject to administrative or judicial action brought by or on behalf of any state or local government or agency thereof or by or on behalf of any person to compel rehabilitation or pay for the costs of rehabilitation of environmental contamination resulting from the discharge of drycleaning solvents. Subject to the delays that may occur as a result of the prioritization of sites under this section for any qualified site, costs for activities described in paragraph (2)(b) shall be absorbed at the expense of the

drycleaning facility restoration funds, without recourse to reimbursement or recovery from the real property owner, nearby real property owner, or owner or operator of the drycleaning facility or the wholesale supply facility. Notwithstanding any other provision of this chapter, this subsection applies to causes of action accruing on or after the effective date of this act and applies retroactively to causes of action accruing before the effective date of this act for which a lawsuit has not been filed before the effective date of this act.

(b) With regard to drycleaning facilities or wholesale supply facilities that have operated as drycleaning facilities or wholesale supply facilities on or after October 1, 1994, any such drycleaning facility or wholesale supply facility at which there exists contamination by drycleaning solvents shall be eligible under this subsection regardless of when the drycleaning contamination was discovered, provided that the drycleaning facility or the wholesale supply facility:

1. Has been registered with the department;

2. Is determined by the department to be in compliance with the department's rules regulating drycleaning solvents, drycleaning facilities, or wholesale supply facilities on or after November 19, 1980;

3. Has not been operated in a grossly negligent manner at any time on or after November 19, 1980;

4. Has not been identified to qualify for listing, nor is listed, on the National Priority List pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended by the Superfund Amendments and

Reauthorization Act of 1986, and as subsequently amended;

5. Is not under an order from the United States Environmental Protection Agency pursuant to s. 3008(h) of the Resource Conservation and Recovery Act as amended (42 U.S.C.A. s. 6928(h)), or has not obtained and is not required to obtain a permit for the operation of a hazardous waste treatment, storage, or disposal facility, a postclosure permit, or a permit pursuant to the federal Hazardous and Solid Waste Amendments of 1984;

and provided that the real property owner or the owner or operator of the drycleaning facility or the wholesale supply facility has not willfully concealed the discharge of drycleaning solvents and has remitted all taxes due pursuant to ss. 376.70 and 376.75, has provided documented evidence of contamination by drycleaning solvents as required by the rules developed pursuant to this section, has reported the contamination prior to December 31, 1998, and has not denied the department access to the site.

(c) With regard to drycleaning facilities or wholesale supply facilities that cease to be operated as drycleaning facilities or wholesale supply facilities prior to October 1, 1994, such facilities, at which there exists contamination by drycleaning solvents, shall be eligible under this subsection regardless of when the contamination was discovered, provided that the drycleaning facility or wholesale supply facility:

1. Was not determined by the department, within a reasonable time after the department's discovery, to have been

out of compliance with the department rules regulating drycleaning solvents, drycleaning facilities, or wholesale supply facilities implemented at any time on or after November 19, 1980;

2. Was not operated in a grossly negligent manner at any time on or after November 19, 1980;

3. Has not been identified to qualify for listing, nor is listed, on the National Priority List pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, and as subsequently amended; and

4. Is not under an order from the United States Environmental Protection Agency pursuant to s. 3008(h) of the Resource Conservation and Recovery Act, as amended, or has not obtained and is not required to obtain a permit for the operation of a hazardous waste treatment, storage, or disposal facility, a postclosure permit, or a permit pursuant to the federal Hazardous and Solid Waste Amendments of 1984;

and provided that the real property owner or the owner or operator of the drycleaning facility or the wholesale supply facility has not willfully concealed the discharge of drycleaning solvents, has provided documented evidence of contamination by drycleaning solvents as required by the rules developed pursuant to this section, has reported the contamination prior to December 31, 1998, and has not denied the department access to the site.

(d) For purposes of determining eligibility, a drycleaning facility or wholesale supply facility was operated in a grossly negligent manner if the department determines that the owner or operator of the drycleaning facility or the wholesale supply facility:

1. Willfully discharged drycleaning solvents onto the soils or into the waters of the state after November 19, 1980, with the knowledge, intent, and purpose that the discharge would result in harm to the environment or to public health or result in a violation of the law;

2. Willfully concealed a discharge of drycleaning solvents with the knowledge, intent, and purpose that the concealment would result in harm to the environment or to public health or result in a violation of the law; or

3. Willfully violated a local, state, or federal law or rule regulating the operation of drycleaning facilities or wholesale supply facilities with the knowledge, intent, and purpose that the act would result in harm to the environment or to public health or result in a violation of the law.

(e)1. With respect to eligible drycleaning solvent contamination reported to the department as part of a completed application as required by the rules developed pursuant to this section by June 30, 1997, the costs of activities described in paragraph (2)(b) shall be absorbed at the expense of the drycleaning facility restoration funds, less a $1,000 deductible per incident, which shall be paid by the applicant or current property owner. The deductible shall be paid within 60 days after receipt of billing by the department.

2. For contamination reported to the department as part of a completed application as required by the rules developed under this section, from July 1, 1997, through September 30, 1998, the costs shall be absorbed at the expense of the drycleaning facility restoration funds, less a $5,000 deductible per incident. The deductible shall be paid within 60 days after receipt of billing by the department.

3. For contamination reported to the department as part of a completed application as required by the rules developed pursuant to this section from October 1, 1998, through December 31, 1998, the costs shall be absorbed at the expense of the drycleaning facility restoration funds, less a $10,000 deductible per incident. The deductible shall be paid within 60 days after receipt of billing by the department.

4. For contamination reported after December 31, 1998, no costs will be absorbed at the expense of the drycleaning facility restoration funds.

(f) ~~The provisions of~~ This subsection does ~~shall~~ not apply to any site where the department has been denied site access to implement the provisions of this section.

(g) In order to identify those drycleaning facilities and wholesale supply facilities that have experienced contamination resulting from the discharge of drycleaning solvents and to ensure the most expedient rehabilitation of such sites, the owners and operators of drycleaning facilities and wholesale supply facilities are encouraged to detect and report contamination from drycleaning solvents related to the operation of drycleaning facilities and wholesale supply facilities. The

department shall establish reasonable guidelines for the written reporting of drycleaning contamination and shall distribute forms to registrants under s. 376.303(1)(d), and to other interested parties upon request, to be used for such purpose.

(h) A report of drycleaning solvent contamination at a drycleaning facility or wholesale supply facility made to the department by any person in accordance with this subsection, or any rules promulgated pursuant hereto, may not be used directly as evidence of liability for such discharge in any civil or criminal trial arising out of the discharge.

(i) A drycleaning facility at which contamination by drycleaning solvents exists and which was damaged by accident prior to January 1, 1975, is eligible under this subsection, regardless of whether an application for eligibility was filed on or before December 31, 1998. As used in this paragraph, the term "accident" means an unplanned and unanticipated occurrence beyond the control of the owner or operator of a drycleaning facility which resulted in physical damage to the facility when the actions of responders to such occurrence could reasonably be determined to have caused or exacerbated contamination by drycleaning solvents at such facility.

(j) ~~(i) The provisions of~~ This subsection does ~~shall~~ not apply to drycleaning facilities owned or operated by the state or Federal Government.

(k) ~~(j)~~ Due to the value of Florida's potable water, it is the intent of the Legislature that the department initiate and facilitate as many cleanups as possible utilizing the resources of the state, local governments, and the private sector. The

department is authorized to adopt necessary rules and enter into contracts to carry out the intent of this subsection and to limit or prevent future contamination from the operation of drycleaning facilities and wholesale supply facilities.

(l) ~~(k)~~ It is not the intent of the Legislature that the state become the owner or operator of a drycleaning facility or wholesale supply facility by engaging in state-conducted cleanup.

(m) ~~(l)~~ The owner, operator, and either the real property owner or agent of the real property owner may apply for the Drycleaning Contamination Cleanup Program by jointly submitting a completed application package to the department pursuant to the rules that shall be adopted by the department. If the application cannot be jointly submitted, then the applicant shall provide notice of the application to other interested parties. After reviewing the completed application package, the department shall notify the applicant in writing as to whether the drycleaning facility or wholesale supply facility is eligible for the program. If the department denies eligibility for a completed application package, the notice of denial shall specify the reasons for the denial, including specific and substantive findings of fact, and shall constitute agency action subject to the provisions of chapter 120. For the purposes of ss. 120.569 and 120.57, the real property owner and the owner and operator of a drycleaning facility or wholesale supply facility which is the subject of a decision by the department with regard to eligibility shall be deemed to be parties whose substantial interests are determined by the department's

decision to approve or deny eligibility.

(n) ~~(m)~~ Eligibility under this subsection applies to the drycleaning facility or wholesale supply facility, and attendant site rehabilitation applies to such facilities and to any place where drycleaning-solvent contamination migrating from the eligible facility is found. A determination of eligibility or ineligibility shall not be affected by any conveyance of the ownership of the drycleaning facility, wholesale supply facility, or the real property on which such facility is located. Nothing contained in this chapter shall be construed to allow a drycleaning facility or wholesale supply facility which would not be eligible under this subsection to become eligible as a result of the conveyance of the ownership of the ineligible drycleaning facility or wholesale supply facility to another owner.

(o) ~~(n)~~ If funding for the drycleaning contamination rehabilitation program is eliminated, the provisions of this subsection shall not apply.

(p) ~~(o)~~1. The department shall have the authority to cancel the eligibility of any drycleaning facility or wholesale supply facility that submits fraudulent information in the application package or that fails to continuously comply with the conditions of eligibility set forth in this subsection, or has not remitted all fees pursuant to s. 376.303(1)(d), or has not remitted the deductible payments pursuant to paragraph (e).

2. If the program eligibility of a drycleaning facility or wholesale supply facility is subject to cancellation pursuant to this section, then the department shall notify the applicant in

writing of its intent to cancel program eligibility and shall state the reason or reasons for cancellation. The applicant shall have 45 days to resolve the reason or reasons for cancellation to the satisfaction of the department. If, after 45 days, the applicant has not resolved the reason or reasons for cancellation to the satisfaction of the department, the order of cancellation shall become final and shall be subject to the provisions of chapter 120.

(q) ~~(p)~~ A real property owner shall not be subject to administrative or judicial action brought by or on behalf of any person or local or state government, or agency thereof, for gross negligence or violations of department rules prior to January 1, 1990, which resulted from the operation of a drycleaning facility, provided that the real property owner demonstrates that:

1. The real property owner had ownership in the property at the time of the gross negligence or violation of department rules and did not cause or contribute to contamination on the property;

2. The real property owner was a distinct and separate entity from the owner and operator of the drycleaning facility, and did not have an ownership interest in or share in the profits of the drycleaning facility;

3. The real property owner did not participate in the operation or management of the drycleaning facility;

4. The real property owner complied with all discharge reporting requirements, and did not conceal any contamination; and

5. The department has not been denied access.

The defense provided by this paragraph does not apply to any liability under a federally delegated program.

(r) ~~(q)~~ A person whose property becomes contaminated due to geophysical or hydrologic reasons from the operation of a nearby drycleaning or wholesale supply facility and whose property has never been occupied by a business that utilized or stored drycleaning solvents or similar constituents is not subject to administrative or judicial action brought by or on behalf of another to compel the rehabilitation of or the payment of the costs for the rehabilitation of sites contaminated by drycleaning solvents, provided that the person:

1. Does not own and has never held an ownership interest in, or shared in the profits of, the drycleaning facility operated at the source location;

2. Did not participate in the operation or management of the drycleaning facility at the source location; and

3. Did not cause, contribute to, or exacerbate the release or threat of release of any hazardous substance through any act or omission.

The defense provided by this paragraph does not apply to any liability under a federally delegated program.

(s) ~~(r)~~ Nothing in this subsection precludes the department from considering information and documentation provided by private consultants, local government programs, federal agencies, or any individual which is relevant to an eligibility

determination if the department provides the applicant with reasonable access to the information and its origin.

Section 2. This act shall take effect upon becoming a law.

1621 CS

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1621 Coastal Properties Disclosure Statements
SPONSOR(S): Mayfield
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1948

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice Committee	5 Y, 0 N	Blalock	Bond
2) Agriculture & Environment Appropriations Committee		Dixon	Dixon
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

The Department of Environmental Protection has established coastal construction control lines along the sand beaches of the state fronting on the Atlantic Ocean, Gulf of Mexico, and the Straits of Florida. The purpose of these lines is to define the portions of the beach-dune system that are subject to severe erosion, and to prohibit new construction seaward of this line unless granted a special permit by the Department of Environmental Protection.

This bill requires the seller of property subject to the coastal construction control line to present a prospective purchaser with a specific disclosure statement providing that the property is subject to erosion and to federal, state, or local regulations.

The bill also provides that failure to deliver the disclosure will not effect the enforcement of the sale and purchase contract, create a right of recession, or impair the property's title.

This bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill increases the disclosure requirements that a seller of coastal property must provide to a prospective purchaser.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

The Department of Environmental Protection (department) has established coastal construction control lines, as required by statute, on a county basis along the sand beaches of the state fronting on the Atlantic Ocean, Gulf of Mexico, and the Straits of Florida.[1] The purpose of these lines is to define that portion of the beach-dune system that is subject to severe fluctuations based on a 100-year storm surge, storm waves, or other predictable weather conditions.[2] Upon the recording of the survey showing the location of a beach erosion control line, title to all lands seaward of the erosion control line are deemed to be vested in the state by right of its sovereignty.[3] Property seaward of the coastal construction control line can be subject to coastal erosion and to federal, state, or local regulations that govern coastal property, such rigid coastal protection structures[4], beach nourishment, and protection of marine turtles.

Current law requires that a seller of real property located partially or totally seaward of the coastal construction control line provide to the purchaser an affidavit, or a survey, that discloses to the purchaser the location of the coastal control line on the property being conveyed.[5] This disclosure requirement was established by the legislature to ensure that purchasers in coastal areas were aware that such lands are subject to frequent and severe fluctuations due to erosion.[6] Critical erosion affects the value of property a great deal more than is often acknowledged. The amount of depression of coastal property values due to erosion over the next twenty years for properties along the Atlantic coast of the United States has been estimated at between $1.7 and $2.7 billion.[7]

There also exists in the common law a general duty to disclose when a seller is aware of facts materially affecting value or desirability of property, which are not readily observable and are not known to the buyer.[8] Several provisions in current law require the seller to provide specific disclosure statements prior to the sale of real property. A seller must disclose:

- The amount of ad valorem taxes on real property;[9]
- Whether there are homeowners' association covenants;[10]
- Energy performance level for each new residential building[11]; and

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[1] Section 161.053(1)(a), F.S.
[2] Section 161.053(1)(a), F.S.
[3] Section 161.191(1), F.S.
[4] Rigid coastal protection structures are man-made structures or devices in or near the coastal system for the purpose of preventing erosion of the beach or the upland dune system or to protect upland structures from the effects of coastal wave and current activity.
[5] Section 161.57(2), F.S.
[6] Section 161.57(1), F.S.
[7] *Evaluation of Erosion Hazards Summary* A Collaborative Project of The H. John Heinz III Center for Science, Economics and the Environment, (Prepared for the Federal Emergency Management Agency, Contract EMW-97-CO-0375, April 2000) at: http://www.heinzctr.org/NEW_WEB/PDF/erosnsum.pdf#zoom=100 (last visited March 16, 2006).
[8] *Johnson v. Davis*, 449 So.2d 344 (Fla. 3rd DCA 1984)
[9] Section 689.261, F.S.
[10] Section 720.401, F.S.

- The possibility of increased levels of radon gas.[12]

Contracts for the sale and purchase of a condominium, cooperative, and timeshare interest have several disclosure requirements as well. [13,14,15]

Effect of Bill

The bill amends s. 161.57, F.S., pertaining to the "Coastal Properties Disclosure Statement", to require an additional disclosure of a seller of coastal real property that is seaward of the coastal construction control line as defined s. 161.053, F.S. At or prior to closing the seller is required to disclose that:

> The property being purchased may be subject to coastal erosion and certain federal, state, or local regulations that regulate coastal property, including the delineation of the coastal construction control line, rigid coastal protection structures, beach nourishment, and the protection of marine turtles. Additional information can be obtained from the Department of Environmental Protection, including whether there are significant erosion conditions associated with the shore line of the property being purchased.

The disclosure may be set forth in the contract or in a separate writing.

The bill also provides that failure to deliver the disclosure, affidavit, or survey required by s. 161.57, F.S., shall not effect the enforcement of sale and purchase contract by either party, create a right of recession by the purchaser, or impair the property's title.

C. SECTION DIRECTORY:

Section 1 amends s. 161.57, F.S., to provide disclosure requirements for property located seaward of the coastal construction control line.

Section 2 provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

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[11] Section 553.9085, F.S.
[12] Section 404.056, F.S.
[13] Section 718.503, F.S.
[14] Section 719.503, F.S.
[15] Section 721.06, F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

A bill to be entitled

An act relating to coastal properties disclosure statements; amending s. 161.57, F.S.; requiring sellers of certain coastal properties to provide a disclosure statement to prospective purchasers; providing language for the disclosure statement; preserving the enforceability of certain contracts and title conveyances; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 161.57, Florida Statutes, is amended to read:

161.57 Coastal properties disclosure statement.--

(1) The Legislature finds that it is necessary to ensure that the purchasers of interests in real property located in coastal areas partially or totally seaward of the coastal construction control line as defined in s. 161.053 are fully apprised of the character of the regulation of the real property in such coastal areas and, in particular, that such lands are subject to frequent and severe fluctuations.

(2) At or prior to the time a seller and a purchaser both execute a contract for the sale and purchase of any interest in real property located either partially or totally seaward of the coastal construction control line as defined in s. 161.053, the seller shall provide to the prospective purchaser the following disclosure, which may be set forth in the contract or in a separate writing:

The property being purchased may be subject to coastal erosion and to federal, state, or local regulations that govern coastal property, including the delineation of the coastal construction control line, rigid coastal protection structures, beach nourishment, and protection of marine turtles. Additional information can be obtained from the Florida Department of Environmental Protection, including whether there are significant erosion conditions associated with the shoreline of the property being purchased.

(3) ~~(2)~~ Unless otherwise waived in writing by the purchaser, at or prior to the closing of any transaction where an interest in real property located either partially or totally seaward of the coastal construction control line as defined in s. 161.053 is being transferred, the seller shall provide to the purchaser an affidavit, or a survey meeting the requirements of chapter 472, delineating the location of the coastal construction control line on the property being transferred.

(4) A seller's failure to deliver the disclosure, affidavit, or survey required by this section shall not impair the enforceability of the sale and purchase contract by either party, create any right of rescission by the purchaser, or impair the title to any such real property conveyed by the seller to the purchaser.

Section 2. This act shall take effect October 1, 2006.